REMARKS

Claim 1 has been amended to obviate the rejection thereof under 35 USC 102 and dependent claim 9 has been canceled to expedite prosecution. Claims 20-36 have been added to provide applicants with the protection to which they are deemed entitled. Claim 1, as previously submitted, except for the changes necessary to obviate the rejection under 35 USC 112, ¶2, has been combined with claims 5-8 to form claim 37. Since claim 8 was indicated as containing allowable subject matter, claim 37 is allowable.

Applicants note the indication of claim 17 containing allowable subject matter.

The rejection of claims 1-19 as claiming the same invention of claims 1-19 of co-pending application serial number 09/846,689 is moot because Applicants plan to abandon the '689 application.

The specification has been amended to include headings to obviate the objection to it.

Applicants traverse the rejection of claim 10 under 35 USC 112, ¶2. The Examiner has provided no rationale as to why claim 10 does not comply with 35 USC 112, ¶2. The language of claim 1 the Examiner says is vague and indefinite is not in claim 10. Explanation is requested if this ground of rejection is repeated.

Applicants traverse the rejection of claims 10-12, 18 and 19 as being anticipated by Cannon et al (US 6,650,871). The office action includes no statement regarding the limitations of independent claims 10 and 19. Independent system claim 10 is not merely a system re-write of method claim 1 as originally submitted. Method claim 19 is directed to a method of transferring bandwith, a feature not specifically set forth in claim 1 as originally submitted. Hence, the analysis of claim 1 in the office action is not sufficient to deal with the limitations of independent claims 10

and 19.

Independent claim 10 distinguishes over Cannon et al by requiring a portion of the data to be transferred between each of the second communication devices and the first communication device using the first transceivers of the second communication devices, and transferring the data between the second communication devices using the second transceivers thereof. If the Examiner adheres to the rejection, he is requested to indicate where Cannon et al includes such limitations.

Because the anticipation rejection of claim 10 is improper, claims 11, 12 and 18 are not anticipated by Cannon et al. Similarly, the obviousness rejection of claims 13-16, that depend on claim 10, is improper.

Independent claim 19 is not anticipated by Cannon et al because it requires first and second transceivers of communication devices situated within a short range network served by the second transceivers of the communications devices, wherein the data to be transferred to or from the communication device is transferred in portions between the communication devices using the second transceivers and to and from a further communication device using the first transceivers of the communication devices. There was no discussion of these limitations in the office action. If the Examiner is relying on inherency for the foregoing features of claim 19, he has not met the burden of proving inherency for them. The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F3d 1531, 1534, 28 USPQ 1955, 1957 (Federal Circuit 1993); in Re Oelrich, 666 F2d 578, 58, 582, 212 USPQ 323, 326 (CCPA 1981). To establish inherency, extrinsic evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference and that it would be so recognized by persons of ordinary skill in the art. Inherency may not be established by probabilities or probabilitics. The mere fact that a certain thing may

result from a given set of circumstances is not sufficient. In re Roberston 169 F3d 743, 745, 49 UDSPQ 2nd 1949, 1950-1951 (Federal Circuit 1999). In relying upon a theory of inherency, the examiner must provide a basis in fact or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the prior art. Ex parte Levy, USPQ 2nd 1461, 1464 (Board of Patent Appeals and Interferences 1990). The Examiner must provide a basis for indicating Cannon et al includes the foregoing claim 19 features.

Newly added independent claim 20 is directed to a method of transferring data between a second communications device and a first communications device using a plurality of other communications devices. The second communications device and the other communications devices each have a first transceiver for communication at a first data rate over a long range and a second transceiver for communicating at a second higher data rate over a short range. The method comprises the steps of forming a coordinated short range network using the second communications device and the plurality of other communications devices. Transferring portions of said data from the second communications device to said other communications devices using their second transceivers. The second communications devices and the other communications devices transfer said data portions to the first communications device using their first transceivers.

Newly added independent claim 26 defines a method of enabling a second communications device to receive data at a higher rate from a first communications device. The second communications device has a first transceiver for communicating a first data rate over a long range and a second transceiver for communicating at a second, higher, data rate over a short range. The method comprises the steps of obtaining the addresses of other communications devices in a short range network with the second communications device and communicating

with the second communications device by its second transceiver. The other communications devices are prepared to relay data between the first communications device and the second communications device. The first communications device is notified of the addresses of other communications devices. There is a request fir data to be provided to the other communications devices to be relayed to the second communications device. Portions of the data from the other communications devices are received. The portions are assembled to form the requested data.

Newly added claim 31 is directed to a method of enabling a second communications device to send data at a higher data rate to a first communications device. The second communications device has a first transceiver for communicating at a first data rate over a long range and a second transceiver for communicating at a second, higher, data rate over a short range. The method comprising the steps of determining that other communications devices, that are (1) in a short-range network with the second communications device and (2) communicating with the second communications device by its second transceiver are prepared to relay data between the first communications device and the second communications device. Portions of the data are sent to the said other communications devices such that each of the portions of the data are indicated to be for onward transmission to the first communications device.

Newly added independent claim 36 defines a method of increasing the data rate from a first communications device to a second communications device. The method requires the first communications device to receive a request for data from the second communications device. The request includes addresses of a plurality of communications devices. The first communications device divides the data into a plurality of portions and sends respective portions of the data to each of the addresses identified in the request for onward transmission to the second communications device.

The features of the foregoing newly added independent claims are not disclosed or made obvious by the art of record

In view of the foregoing amendments and remarks, favorable reconsideration and allowance are respectfully requested and deemed in order.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 07-1337 and please credit any excess fees to such deposit account.

Respectfully submitted,

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